RETAIL SALES TAX ACT.

Sec. 16. Whenever any person has failed to comply with any of the provisions of this act or any rules or regulations of the board prescribed and adopted under this act, the board upon hearing, after giving to such person ten days' notice in writing specifying the time and place of such hearing and requiring him to show cause why his permit or permits should not be revoked, may revoke or suspend any one or more of the permits held by such person. Such notice may be served personally or by mail in the same manner as prescribed for service of notice by the provisions of section 17 hereof. A new permit shall not be issued after the revocation of a permit unless it appears to the satisfaction of the board that the former holder of the permit will comply with such provisions and regulations. (Statutes 1939, Chapter 679; operative July 1, 1939.)

Sec. 17. The burden of proving that a sale of tangible personal property is not a sale at retail shall be upon the person who makes it, unless such person takes from the purchaser a certificate to the effect that the property is purchased for resale. Such certificate relieves the seller from such burden only if taken in good faith from a person engaged in the business of selling tangible personal property and holding the permit provided for in section 12 of this act and who, at the time of purchasing the tangible personal property, intends to sell it in the regular course of business or is unable to ascertain at the time of purchase

whether such property will be sold or will be used for some other purpose. Such certificate shall be signed by and bear the name and address of the purchaser, shall indicate the number of the permit issued to such purchaser under this act, and shall indicate the general character of the tangible personal property sold by such purchaser in the regular course of business. Such certificate shall be substantially in such form as the board may prescribe.

If a purchaser who gives such a certificate makes any use of such property other than retention, demonstration, or display while holding it for sale in the regular course of business, such use shall be deemed a retail sale by such purchaser as of the time such property is first used by him and the cost of such property to him shall be deemed the gross receipts from such retail sale. If the sole use of such property other than retention, demonstration or display in the regular course of business is the rental of the property while holding it for sale, the purchaser may elect to include in his gross receipts the amount of the rental charged rather than the cost of the property to him.

For the purpose of the proper administration of this act and to prevent evasion of the tax hereby imposed it shall be presumed that all gross receipts are subject to the tax hereby imposed until the contrary is established. If the board is not satisfied with the return or returns of tax made by any retailer, it is hereby authorized and empowered to make an additional assessment of tax due from such retailer based upon the facts contained in the return or returns, or

upon any information within its possession or that shall come into its possession. An additional assessment may be made of the amount of tax due for more than one period. The amount of tax so assessed shall bear interest at the rate of one-half of one per cent per month, or fraction thereof, from the fifteenth day after the close of the quarterly period for which the amount of such tax or any portion thereof should have been returned until the date of payment. In making an assessment hereunder the board may offset overpayments for a period or periods together with interest on such overpayments, against underpayments for another period or periods against penalties, and against the interest on such underpayments. Such interest on underpayments and overpayments shall be computed in the manner set forth in sections 9½ and 23 hereof. If any part of the deficiency for which the additional assessment is imposed is due to negligence or intentional disregard of the act or authorized rules and regulations, a penalty of 10 per cent of the amount of the additional assessment shall be added thereto. If any part of the deficiency for which the additional assessment is imposed is due to fraud or an intent to evade the tax, a penalty of 25 per cent of the amount of the additional assessment shall be added thereto. The board shall give to the retailer written notice of such additional assessment. Such notice may be served upon the retailer personally or by mail; if by mail, service shall be made in the manner prescribed by section 1013 of the Code of Civil Procedure and addressed to the retailer at his address as the same appears in the records of the board. (Statutes 1939; Chapter 679; operative July 1, 1939.)

Sec. 20. Any retailer against whom an assessment is made by the board under the provisions of section 17 or 18 hereof may petition for a reassessment thereof within thirty days after service upon the retailer of notice thereof. If a petition for reassessment is not filed within said thirty-day period the amount of the assessment becomes final at the expiration thereof.

If a petition for reassessment is filed within said thirty-day period the board shall reconsider the assessment, and if the retailer has so requested in his petition, shall grant said retailer an oral hearing and shall give the retailer ten days' notice of the time and place thereof. The board shall have power to continue the hearing from time to time as may be necessary.

The board may decrease or increase the amount of the assessment. The amount of the assessment may be increased, however, only if a claim for such increase is asserted by the board at or before the hearing.

The order or decision of the board upon a petition for reassessment shall become final thirty days after service upon the retailer of notice thereof.

All assessments made by the board under the provisions of section 17 or 18 hereof shall become due and payable at the time they become final and if not paid when due and payable there shall be added thereto a penalty of 10 per cent of the amount of the tax.

Any notice required by this section shall be served personally or by mail in the same manner as prescribed for service of notice by the provisions of sec-

tion 17 hereof. (*Statutes 1939, Chapter 679; operative July 1, 1939.*)

Sec. 23. If the board determines that any tax, penalty or interest has been paid more than once, or has been erroneously or illegally collected, the board shall set forth that fact in the records of the board and shall certify to the State Board of Control the amount collected in excess of what was legally due, from whom it was collected, or by whom paid, and if approved by that board the same shall be credited on any taxes then due from the retailer under this act or under the California Use Tax Act of 1935 and the balance shall be refunded to the retailer, or his successors, administrators, or executors, but no such credit or refund shall be allowed unless a claim therefor is filed with the State Board of Equalization within three years from the fifteenth day after the close of the quarterly period for which the overpayment was made or, with respect to assessments made under the provisions of sections 17 and 18 hereof, within six months after such assessments become final, whichever period expires the later.

Every such claim must be in writing and must state the specific grounds upon which the claim is founded.

Failure to file such claim within the time prescribed in this section shall constitute waiver of any and all demands against this State on account of overpayments hereunder. Within thirty days after disallowing any such claim in whole or in part, the board shall serve notice of such action on the claimant, such service to be made as provided by section 17 hereof.

Interest shall be computed, allowed and paid upon any overpayment of any tax, at the rate of one-half of one per centum per month as follows:

(1) From the fifteenth day of the calendar month following the quarterly period for which the overpayment was made but no refund or credit shall be made of any interest imposed upon the claimant with respect to the tax being refunded or credited.

(2) In the case of a refund, to the fifteenth day of the calendar month following the date upon which the claimant is notified by the board that a claim may be filed or that the claim has been certified to the State Board of Control, whichever date is the earlier.

(3) In the case of a credit, to the same date that interest is computed on the tax against which the credit is applied.

Any refund or any portion thereof which is erroneously made and any credit or any portion thereof which is erroneously allowed, may be recovered in an action brought by the Controller of the State in a court of competent jurisdiction in the county of Sacramento, in the name of the people of the State of California and such action shall be tried in the county of Sacramento unless the court with the consent of the Attorney General, orders a change of place of trial. The Attorney General must prosecute such action, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proofs, trials and appeals are applicable to the proceedings herein provided for.

In the event that a tax has been illegally levied, the board shall certify such fact to the State Board of Control and said board shall authorize the cancellation of the tax upon the records of the board.

If the board determines that any overpayment of tax has been intentionally made or made by reason of carelessness, it shall not allow any interest thereon. (Statutes 1939, Chapter 679; operative July 1, 1939.)

Sec. 31. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against this State or against any officer thereof to prevent or enjoin the collection under this act of any tax sought to be collected, and no suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally assessed or collected unless a claim for refund or credit has been duly filed as provided in section 23 hereof.

Within ninety days after the mailing of the notice of the board's action upon such claim, the claimant may bring an action against the board on the grounds set forth in such claim in a court of competent jurisdiction in the county of Sacramento for the recovery of the whole or any part of the amount with respect to which such claim has been disallowed.

If the board fails to mail notice of action on any such claim within six months after the claim is filed the claimant may, prior to mailing notice of action on such claim by the board, consider the claim disallowed and bring an action against the board on the grounds

set forth in such claim for the recovery of the whole or any part of the amount claimed as an overpayment. Failure to bring suit or action within the time specified shall constitute a waiver of any and all demands against this State on account of any alleged overpayments hereunder.

If in any such action judgment is rendered for the plaintiff, the amount of the judgment shall first be credited on any taxes due from the plaintiff under this act or under the California Use Tax Act of 1935, and the balance of the judgment shall be refunded to the plaintiff. In any such judgment, interest shall be allowed at the rate of 6 per cent per annum upon the amount found to have been illegally collected from the date of payment of such amount to the date of allowance of credit on account of such judgment or to a date preceding the date of the refund warrant by not more than thirty days, such date to be determined by the board.

In no case shall any judgment be rendered in favor of the plaintiff in any action brought against the board to recover any tax paid hereunder, when such action is brought by or in the name of an assignee of the retailer paying said tax, or by any person other than the person who has paid such tax. (*Statutes 1939, Chapter 679; operative July 1, 1939.*)

Appendix B

RETAIL SALES TAX ACT.

Section 31. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against this State or against any officer thereof to prevent or enjoin under this act the collection of any tax sought to be collected; but after payment of any such tax under protest, duly verified and setting forth the grounds of objection to the legality of such tax, the retailer paying such tax may bring an action against the State Treasurer in a court of competent jurisdiction in the county of Sacramento for the recovery of tax so paid under protest. No such action may be instituted more than sixty days after the tax becomes due and payable, and failure to bring suit within said sixty days shall constitute waiver of any and all demands against this State on account of alleged over-payment of taxes hereunder. No grounds of illegality of the tax shall be considered by the court other than those set forth in the protest filed at the time of the payment of the tax.

If in any such action judgment is rendered for the plaintiff, the amount of the judgment shall first be credited on any taxes due from the plaintiff under this act, and the balance of the judgment shall be refunded to the plaintiff. In any such judgment, interest shall be allowed at the rate of six per cent per annum upon the amount of tax found to have been illegally collected from the date of payment of such tax to the

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date of allowance of credit on account of such judgment or to a date preceding the date of the refund warrant by not more than thirty days, such date to be determined by the Controller.

In no case shall any judgment be rendered in favor of the plaintiff in any action brought against the State Treasurer to recover any tax paid hereunder, when such action is brought by or in the name of an assignee of the retailer paying said tax, or by any person other than the person who has paid such tax. (*Original section; Statutes 1933, p. 2610.*)